

NOT TO BE INCLUDED
IN BOUND VOLUMES

PHG
Los Angeles, CA

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

TESCO PLC d/b/a FRESH & EASY
NEIGHBORHOOD MARKET, INC.

and

Cases 31-CA-29913
31-CA-30021
31-CA-30088

UNITED FOOD AND COMMERCIAL
WORKERS INTERNATIONAL UNION

ORDER DENYING MOTION FOR RECONSIDERATION

On June 25, 2012, the National Labor Relations Board, by a three-member panel, issued a Decision and Order in this proceeding.¹ The Board found that the Respondent committed four violations of Section 8(a)(1) of the Act, but also found that a broad cease-and-desist order was not warranted.² On July 17, 2012, the Charging Party filed a Motion for Reconsideration. On August 13, 2012, the Respondent filed an opposition to the motion.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

¹ 358 NLRB No. 65.

² Member Hayes dissented from three of the violations, but joined the majority in declining to issue a broad order.

The Charging Party urges the Board to reconsider its decision not to issue a broad cease-and-desist order. We deny the Charging Party's motion for the reasons set forth below.

First, the Charging Party points out that, while its exceptions were pending with the Board, the Court of Appeals for the District of Columbia Circuit enforced two prior decisions in which the Board found that the Respondent had violated the Act.³ The Charging Party reiterates its argument, previously made to the administrative law judge and the Board, that the two prior cases demonstrate the Respondent's proclivity to violate the Act. The Charging Party further contends that the Respondent's refusal to comply with the Board's decisions before enforcement shows that the Respondent is an "intentional and recidivist violator."

We find these arguments unpersuasive. The Board was well aware of its prior decisions against the Respondent when it issued its decision in the present case. Indeed, the decision cites those earlier decisions. The Board also knew that the D.C. Circuit had enforced the orders in those cases. Addressing the Respondent's subsidiary point, we observe that the Respondent's refusal to comply with the Board's orders before enforcement does not show a proclivity to violate the Act. See *Longshoremen ILWU Local 151 (Port Townsend)*, 294 NLRB 674, 675 fn. 8 (1989) ("Board orders are not self-enforcing, and . . . , until such orders are enforced by a United States court of appeals, no penalties are incurred for disobeying them.").

³ *Fresh & Easy Neighborhood Market, Inc.*, 356 NLRB No. 90 (2011), modified on other grounds 2011 WL 1038028 (Mar. 22, 2011), enfd. mem. 459 Fed. Appx. 1 (D.C. Cir. Mar. 13, 2012); *Fresh & Easy Neighborhood Market, Inc.*, 356 NLRB No. 85 (2011), modified on other grounds 356 NLRB No. 145 (2011), enfd. mem. 468 Fed. Appx. 1 (D.C. Cir. Mar. 5, 2012).

Second, the Charging Party cites two cases pending in the Board's regional offices as further evidence of the Respondent's proclivity to violate the Act: *2 Sisters Food Group*, 21-CA-38915, a compliance proceeding presenting the issue of whether the Respondent is liable as a successor for the unfair labor practices of another entity, and *Fresh & Easy Neighborhood Market, Inc.*, 21-CA-39649, in which the Acting General Counsel issued a complaint alleging that the Respondent maintained an unlawful rule at another store. As to the latter case, the Charging Party also highlights the Respondent's refusal to comply with a subpoena.

We reject this argument, as well. It has not yet been determined in either case whether the Respondent is liable for violating the Act, and the Board does not issue broad orders based on pending cases. Cf. *Electrical Workers Local 98 (Total Cabling Specialists)*, 339 NLRB 470, 470 fn. 2 (2003) (disclaiming reliance on a case with pending exceptions before the Board when adopting the judge's recommendation for a broad order). Whether a broad order is warranted in the pending *Fresh & Easy* case or in any future cases will be determined if and when those cases come before the Board.

Having duly considered the matter, we find that the Charging Party's motion fails to present "extraordinary circumstances" warranting reconsideration under Section 102.48(d)(1) of the Board's Rules and Regulations.

IT IS ORDERED, therefore, that the Charging Party's motion for reconsideration is denied.

Dated, Washington, D.C., September 25, 2012.

Mark Gaston Pearce, Chairman

Brian E. Hayes, Member

Richard F. Griffin, Jr., Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD